

1 MCGREGOR W. SCOTT
United States Attorney
2 DAVID W. SPENCER
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700
Facsimile: (916) 554-2900
5

6 Attorneys for Plaintiff
United States of America
7

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9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
Plaintiff,
13
v.
14 JOSE VICTOR RODRIGUEZ,
15
Defendant.

CASE NO. 2:19-CR-237-KJM

STIPULATION REGARDING USE OF
VIDEOCONFERENCING DURING PLEA
HEARING; FINDINGS AND ORDER

DATE: June 1, 2020
TIME: 9:00 a.m.
COURT: Hon. Kimberly J. Mueller

16
17 **BACKGROUND**

18 On December 19, 2019, the grand jury returned an indictment charging Defendant Jose Victor
19 Rodriguez with a violation of 21 U.S.C. § 841(a)(1) – possession with intent to distribute at least 50
20 grams of a mixture or substance containing methamphetamine.

21 On or about May 20, 2020, the United States and Defendant agreed to enter into a written plea
22 agreement.

23 On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act
24 (“CARES Act”). The CARES Act empowered the Judicial Conference of the United States and Chief
25 District Judges to authorize felony plea hearings by video or telephonic conference if, because of
26 emergency conditions caused by the COVID-19 pandemic, 1) such hearings “cannot be conducted in
27 person without seriously jeopardizing public health and safety;” and 2) “the district judge in a particular
28 case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without

serious harm to the interests of justice;” and 3) the defendant consents. *Id.*, Pub. L. 116-23 § 15002(b)(2), § 15002(b)(4).

On March 29, 2020, the Judicial Conference of the United States made the findings required by the CARES Act, concluding that “emergency conditions due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601, et seq.) with respect to . . . [COVID-19] have materially affected and will materially affect the functioning of the federal courts generally.”

On March 30, 2020, the Chief Judge of this District, per General Order 614, also made the findings required by the CARES Act: “[F]elony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted in person without seriously jeopardizing public health and safety.” Accordingly, the findings of the Judicial Conference and General Order 614 establish that plea hearings cannot take safely take place in person.

In order to authorize plea hearings by remote means, however, the CARES Act—as implemented by General Order 614—also requires district courts in individual cases to “find, for specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice.” The CARES Act and General Order 614 further require that the defendant consent to remote proceedings. Finally, the remote proceeding must be conducted by videoconference unless “videoconferencing is not reasonably available.” In such cases, district courts may conduct hearings by teleconference.

The parties hereby stipulate and agree that each of the requirements of the CARES Act and General Order 614 have been satisfied in this case. They request that the Court enter an order making the specific findings required by the CARES Act and General Order 614, so that the change of plea in this matter may take place via videoconference. Specifically, for the reasons further set forth below, the parties agree that:

1) For the specific reasons detailed below, the plea hearing in this case cannot be further delayed without serious harm to the interest of justice, given the public health restrictions on physical contact and court closures existing in the Eastern District of California; and

1 analyzed the public safety dangers associated with the COVID-19 pandemic and examined both the
2 District's caseload (the District currently ranks first in the Ninth Circuit and eighth nationally in
3 weighted filings) and its shortage of judicial resources (the District is currently authorized only six
4 district judges; two of those positions are currently vacant). The report further explained that a backlog
5 of cases exists that "can only start to be alleviated" when the CDC lifts its guidance regarding gatherings
6 of individuals.

7 8. On April 17, 2020, General Order 617 issued, continuing court closures through June 1,
8 2020 and authorizing further continuances of hearings.

9 9. On May 13, 2020, General Order 618 issued, continuing court closures "until further
10 notice," and authorizing further continuances of hearings.

11 10. Given these facts, it is essential that Judges in this District resolve as many matters as
12 possible via videoconference and teleconference during the COVID-19 pandemic. By holding these
13 hearings now, this District will be in a better position to work through the backlog of criminal and civil
14 matters once in-person hearings resume. If the Court were to delay this hearing until it can be held in-
15 person, it would only add to the enormous backlog of criminal and civil matters facing this Court, and
16 every Judge in this District, when normal operations resume.

17 11. In addition, Mr. Rodriguez is incarcerated at the Sacramento County Jail. The parties
18 have reached a plea agreement after months of discussion and defense counsel represents that Mr.
19 Rodriguez now wishes to change his plea. The parties' plea agreement is offered to the Court pursuant
20 to Fed. R. Crim. P. 11(c)(1)(C), meaning the Court may accept or reject the plea agreement, or defer that
21 decision until there has been an opportunity to consider the presentence report. The parties have a
22 strong interest in finding out if the Court will accept the plea as soon as possible, because if the Court
23 does not, the parties will need to prepare for trial.

24 12. The plea hearing in this case accordingly cannot be further delayed without serious harm
25 to the interests of justice.

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13. Under CARES Act § 15002(b), defendant consents to proceed with this hearing by video-teleconference. Counsel joins in this consent.

IT IS SO STIPULATED.

Dated: May 29, 2020

McGREGOR W. SCOTT
United States Attorney

/s/ DAVID W. SPENCER
DAVID W. SPENCER
Assistant United States Attorney


Dated: May 29, 2020

/s/ Christina Sinha
Christina Sinha
Counsel for Defendant
JOSE VICTOR RODRIGUEZ

FINDINGS AND ORDER

1. The Court adopts the findings above.
2. Further, the Court specifically finds that:
 - a) The plea hearing in this case cannot be further delayed without serious harm to the interest of justice;
 - b) The defendant has waived his physical presence at the hearing and consents to remote hearing by Videoconference.
3. Therefore, based on the findings above, and under the Court's authority under § 15002(b) of the CARES Act and General Order 614, the plea hearing in this case will be conducted by Videoconference.

IT IS SO FOUND AND ORDERED this 9th day of June, 2020.


CHIEF UNITED STATES DISTRICT JUDGE